

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
C.A. No.: 3:22-cv-570**

Brian Ludden,

Plaintiff,

vs.

Duke Energy Corporation Short Term Disability Plan,

Defendant.

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**COMPLAINT**

**Preliminary Statement**

Plaintiff brings this action under the Employee Retirement Income Security Act (ERISA) 29 U.S.C. § 1132(a)(1)(B) to seek entitlement and payment of short term disability (STD) benefits under a self-funded short term disability policy issued by the Duke Energy Corporation Short Term Disability Plan.

**Parties**

1. Plaintiff is a citizen and resident of Charlotte, North Carolina which is in Mecklenburg County.

2. Defendant is a self-funded benefit plan organized and existing pursuant to 29 U.S.C.S. § 1132. Upon information and belief, Defendant is an employee benefit plan providing benefits for the employees of Duke Energy Corporation.

**Jurisdiction and Venue**

3. In this matter, Plaintiff seeks short term disability benefits under an ERISA plan pursuant to 29 U.S.C. § 1132(a)(1)(B). This Court has jurisdiction to hear this matter based upon

a federal question. Defendant is subject to jurisdiction in this court because it has more than minimum contacts with this forum (*see* 29 U.S.C. § 1132(e)).

4. Venue in the Western District of North Carolina is appropriate by virtue of Plaintiff's residence and Defendant's presence and doing business in this District.

### **Factual Allegations**

5. Until March 2021, Plaintiff was employed with Duke Energy Corporation, and as an employee of Duke Energy Corporation, Plaintiff was provided with short term disability coverage via a plan which was fully funded by Duke Energy Corporation.

6. Plaintiff became disabled because of certain problems from which he suffered. Plaintiff was forced to cease working and he filed a claim for short term disability benefits.

7. Defendant's claim decision maker denied Plaintiff's claim. Plaintiff appealed the denial and fully exhausted administrative remedies, but Defendant has failed and refused to provide additional benefits.

### **For a First Cause of Action For Benefits Pursuant to 29 U.S.C. § 1132(a)(1)(B)**

8. Plaintiff incorporates all prior allegations, where not inconsistent, as if fully set forth herein.

9. Plaintiff respectfully requests that this Court consider the administrative record compiled in this case and any other evidence relevant to any factors discussed by *Champion v. Black & Decker*, 550 F.3d 353 (4<sup>th</sup> Cir. 2008), if applicable and depending on the standard of review, and declare, pursuant to 29 U.S.C. § 1132(a)(1)(B), that Plaintiff is entitled to the short term disability benefits which he seeks under the terms of the plan. In the event that the court reviews the record and/or other relevant information and determines that the Defendant abused its discretion or that its decision is not supported by the record, but that the substance of the

record might not support Plaintiff's entitlement to benefits then Plaintiff respectfully asks that, in the event of such a finding, that the court exercise its inherent power to remand Plaintiff's claims for a "full and fair" review by the appropriate claim fiduciary Defendant. Should the court award Plaintiff any part of the relief requested, Plaintiff additionally prays that the Court award him attorney's fees and costs pursuant to 29 U.S.C. §1132(g).

**WHEREFORE**, having fully stated his complaint against the Defendant, Plaintiff prays for:

1. A declaration of entitlement to the short term disability benefits he seeks pursuant to 29 U.S.C. §1132(a)(1)(B);
3. Attorney's fees and costs pursuant to 29 U.S.C. §1132(g); and
4. Such other and further relief as this Court deems just and proper, including pre-judgment interest on all benefits due from the point at which benefits were payable through the time of judgment.

s/ M. Leila Louzri  
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